

PUBLIC COPY



**U.S. Citizenship
and Immigration
Services**

Identifying data removed to
prevent clearly unwarranted
invasion of personal privacy

JAN 28 2005

FILE: EAC 03 143 51185 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner is a restaurant and seeks to employ the beneficiary as an executive Sous Chef of pastry operations. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and asserts that the offered position qualifies as a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's requests for additional evidence; (3) the petitioner's response to the director's requests; (4) the director's denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an executive Sous Chef of pastry operations. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: oversee all aspects of pastry department operations; make decisions about budgets, procurement, planning, and strategy for food, menus, and food preparation techniques integral to the restaurant's continued operations and success at an award-winning level; and train and supervise pastry cooks and line cooks to ensure that pastry department staff members continue to perform the day-to-day preparation and baking duties required to produce the petitioner's desserts in both the quantity and quality demanded by clientele. The petitioner requires a minimum of a bachelor's degree or its equivalent in culinary management or a related field for entry into the offered position.

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position, as noted by the director and petitioner, are essentially those noted for chefs. In the *Occupational Outlook Handbook (Handbook)*, 2004-05 edition, the Department of Labor describes, in part, the duties of chefs as follows:

Executive chefs and head cooks coordinate the work of the kitchen staff and direct the preparation of meals. They determine serving sizes, plan menus, order food supplies, and oversee kitchen operations to ensure uniform quality and presentation of meals. The terms chef and cook often are used interchangeably, but generally reflect the different types of chefs and the organizational structure of the kitchen staff. For example, an *executive chef* is in charge of all food service operations and also may supervise the many kitchens of a hotel, restaurant group, or corporate dining operation. A *chef de cuisine* reports to an executive chef and is responsible for the daily operations of a single kitchen. A *sous chef*, or sub chef, is the second-in-command and runs the kitchen in the absence of the chef. Chefs tend to be more highly skilled and better trained than cooks. Many chefs earn fame both for themselves and for their kitchens because of the quality and distinctive nature of the food they serve.

The duties associated with the proffered position are similar to those listed above. The *Handbook* further notes that to achieve the level of skill required of an executive chef, many years of training and experience are necessary. Though many chefs learn their craft through on the job training, formal training is becoming increasingly popular. Employers usually prefer training given by trade schools, vocational centers, colleges, professional associations, or trade unions. Postsecondary courses range from a few months to 4 years or more. It is, therefore, apparent that a baccalaureate degree or its equivalent is not normally the minimum requirement for entry into the profession. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The position offered is not a typical chef position. The petitioner's restaurant operations employ 140 people at three different locations with annual income of approximately \$8,000,000. The facility at which the beneficiary would be employed is world renowned and was recognized as the best New York patisserie by the 2003 ZAGAT survey. It has been featured on such television productions as "Sex and The City," is frequented by a celebrity clientele, and has been featured in such publications as: Travel and Leisure Magazine; Passport to New York Restaurants; Global Chefs; the New York Times; The Best of New York; Departures; the New York Times Magazine; and Bon Appetit Magazine. The petitioner described in great detail, the facility and services that the beneficiary would manage. The petitioner also noted that the beneficiary would be a member of the petitioner's management team, and established that all members of the management team possess a bachelor's degree, or its equivalent.

The *Handbook* provides valuable information about a wide range of occupations in the nation's economy. That information however, is not all inclusive. It provides a general composite description of jobs and cannot reasonably be expected to reflect all work situations in specific establishments or localities. It is therefore, necessary, to consider the nature of the petitioner's operations and the specific duties of the proffered position when determining whether the job is a specialty occupation. Here, the petitioner is a large specialty restaurant with a complex operational and delivery structure. The duties of the proffered position are more complex than those described in the *Handbook* for a typical chef's position. Thus, the petitioner's requirement of a bachelor's degree is a reasonable requirement. The petitioner has established that the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The proffered position is, therefore, a specialty occupation.

The director did not comment on the beneficiary's qualifications to perform the duties of a specialty occupation as the petition was denied on another ground. As such, this matter shall be remanded to the director to determine whether the beneficiary is qualified to perform the duties of the proffered position. The director may request such additional evidence as he deems necessary in rendering his decision.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director to enter a new decision commensurate with the directives of this opinion, which, if adverse to the petitioner, shall be certified to the AAO for review.